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“We can also do stupid”:  
The EU’s response to *America First* protectionism

Simon J. Evenett



European University Institute

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## **Abstract**

The reaction of the European Commission to a series of provocative protectionist acts by the Trump Administration is characterised and then evaluated according to six criteria. The traditional “playbook” for dealing with high-profile US protectionism is found wanting, calling further into question the apparent logic of retaliation. Indeed, the European Commission’s current approach appears to be more of a tactic to buy time than an effective strategy to alter U.S. policy. Implications for the next European Commission are also drawn.

## **Keywords**

America First, protectionism, European Union, commercial policy





**“We can also do stupid”\*:  
The EU’s response to *America First* protectionism**

## **1. Introduction\*\***

Having campaigned on a platform of *America First* it was inevitable that questions would arise whether, once installed in the White House, President Trump was going to follow through with this confrontational approach to international trade relations.<sup>1</sup> After all, albeit with a different style, Barack Obama had been critical of trade deals signed by his predecessors but, upon assuming office, adopted a less critical tone to America’s trading partners. In retrospect, the emphasis in 2017 on getting his Cabinet nominated and confirmed, attempting unsuccessfully to repeal Obama Care, and enacting wide-ranging tax reforms, left some observers with the impression that, like his predecessors, President Trump’s protectionist instincts were no more than a campaigning ploy.

In fact, the Trump administration used 2017 to plant the seeds of the protectionism that was to come in 2018 by initiating a number of investigations and reviews. The bitter fruit that resulted has since been causing indigestion in capitals around the world, in particular in governments that have traditionally supported a rules-based multilateral trading system. Coming on top of a World Trade Organization (WTO) weakened by the failure to complete the Doha Round of multilateral trade negotiations, fears that a meaningful pillar of the post-war economic order is under serious threat arose and arguably remain.

In terms of US tariff hikes implemented and potentially in the works, China is arguably a bigger target of American ire than the European Union. Still, President Trump and his officials have bitterly criticised the goods trade imbalance between the EU and the United States and the 10% import tariff on imported cars into the EU, as well as characterising the EU as having much more protectionist policies. To such critics, the EU’s fine words about multilateralism are just that—rhetoric belied by experience on the ground.<sup>2</sup> The EU has both a direct, and an indirect systemic, stake in current US trade policy.

There is no shortage of advice to European policymakers as to how best to react to *America First* protectionism. Jean, Martin, and Sapir (2018) recommend a response that blends “firm and credible” retaliation with the offer of multilateral or plurilateral talks on macroeconomic imbalances, enhanced

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\* Part of a warning by European Commission President Juncker delivered on 3 March 2018, one week before President Trump issued a Proclamation imposing tariffs on imported steel and aluminium. The full quote is: “So now we will also impose import tariffs. This is basically a stupid process, the fact that we have to do this. But we have to do it. We will now impose tariffs on motorcycles, Harley Davidson, on blue jeans, Levis, on Bourbon. We can also do stupid. We also have to be this stupid.” Source: <http://www.euronews.com/2018/03/03/juncker-responds-to-trump-s-trade-tariffs-we-can-also-do-stupid->

\*\* I thank, without implicating, Per Altenberg, Bernard Hoekman, Sébastien Jean, Patrick Low, Piotr Lukaszuk, and Edwin Vermulst for comments on earlier versions of this paper. An initial version of the argument in this paper was published in December 2018 in the Japan Institute of International Affairs journal “Kokusai Mondai.” The project to which this paper contributes has received funding from the European Union’s Horizon 2020 research and innovation program under grant agreement No 770680.

<sup>1</sup> See, for example, President Trump’s speech on trade policy in Monessen, Pennsylvania, on 28 June 2016, available at <http://time.com/4386335/donald-trump-trade-speech-transcript/>

<sup>2</sup> Social media interventions aside, on my review of the press conducted for this paper, of all the US officials quoted the Secretary of Commerce has made the most negative comments about EU commercial policy. For example, in a 17 May 2018 article in *Inside US Trade*, Secretary Ross is reported as saying: “The United States is one of the least-protectionist major countries, and we have deficits to show for it. China and Europe are highly protectionist and their positive trade balances with us reflect it...[China and Europe] eloquently espouse free-trade rhetoric, but—in practice—are far more protectionist than the United States. Our trade policy’s main objective is to make their real-world behavior match their free-trade speeches” (*Inside U.S. Trade* 2018a).

WTO dispute settlement, stronger rules on subsidies and intellectual property rights, as well as new rules on state-owned enterprises, environmental protection and global warming, and tax evasion and optimisation. For Pisani Ferry (2018) the current transatlantic tensions, which relate to defence as well as to trade policy, mark a pivotal moment for the EU. Having thrived under the umbrella of post-war US institutions, the EU must define its “strategic stance *vis-à-vis* a more distant and possibly hostile US, and *vis-à-vis* rising powers that have no reason to be kind to it. It must stand for its values.” Demertzis (2018) advocates the EU match US threats and tariffs, demonstrating to the Americans the lose-lose nature of protectionism. In contrast, Beattie (2018a) argued “[m]atching Mr Trump tariff for tariff will at some point become counterproductive. If the US no longer wishes to anchor the world economy, it may be better for other governments to get on and supplant it rather than using trade restrictions to try to force it back to its former role.” Later he has poured cold water on the prospects of the European Commission concluding the trade talks called for by Presidents Juncker and Trump in July 2018 on terms acceptable to the European Union (Beattie 2018b). Dadush and Wolff (2019) see a broader “trade crisis,” of which America First policies are one (admittedly important) component. They advance a “Plan A” whose goal is to preserve the multilateral trading system. In their view this would involve the EU revisiting the “red lines” in sensitive areas, such as agriculture (a step they argue would facilitate bilateral talks with the United States as well), and macroeconomic reforms in EU member states running large current account surpluses. Should Plan A fail and the multilateral trading system fragment into blocs then a Plan B would be needed, in which separate bilateral negotiations with China and the United States would be envisaged.

The purpose of this paper is to characterise and evaluate how the European Commission, acting on behalf of the European Union, has reacted to the provocative trade policy actions taken by the Trump Administration during 2018 and 2019. These matters are of interest, not only for what they reveal about how the EU attempts to defend its commercial interests when under pressure, but also because at this time of writing further American protectionism cannot be ruled out. The world trading system—still put on the pedestal as an example of well-functioning global governance by many scholars<sup>3</sup>—may look very different a year from now. That alone says something about the robustness of the current arrangements and, by implication, about the need to reform them.

This paper starts by characterising the four pillars of the *America First* trade policy of the Trump Administration. As that policy has been implemented, many of the United States trading partners, including the European Union, have responded using the classic “playbook” for dealing with American trade discrimination. Section three reprises that playbook, its apparent logic and, more importantly, the weaknesses in that logic. As the playbook had evidently failed by mid-2018, a closer look at the actions taken by the European Commission is warranted and can be found in section four. These inform the assessment of the European Commission’s approach presented in section five. Concluding remarks follow. Inevitably, such an assessment is preliminary as the matters under investigation are unfolding. Still, enough evidence is available to draw some tentative conclusions about the European response to one of the biggest stress tests that the modern world trading system has seen since its creation.

## 2. The four pillars of the *America First* trade policy of the United States

In addition to annual trade policy agenda documents (released in March of each year), the Trump Administration issued a National Security Strategy in December 2017 that had a substantial trade policy component. While some may be tempted to divine the “real” strategy underlying the Trump Administration’s *America First* trade policy from these documents, on the principle that “actions speak

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<sup>3</sup> In my view far too many scholars have let their normative preference for the current rules-based trading system blind them to the system’s evident and growing deficiencies (in the negotiating function, monitoring and deliberation functions, and increasingly the dispute settlement function.)

louder than words," another approach is to focus on the trade policy steps taken since President Trump was inaugurated in January 2017.

Those steps can be assembled into four groups—each constituting a different pillar of the *America First* strategy, see Table 1. Reflecting the different types of trade policy, there is a multilateral pillar, a preferential trade pillar, a bilateral pillar specifically focusing on trade relations with China, and a unilateral pillar. In addition to the usual drumroll of trade remedy cases, the latter pillar includes unilateral acts based on investigations into whether different types of imports constitute a national security threat to the United States, the latter being it seems a favoured tool of the Trump Administration.<sup>4</sup>

In the multilateral pillar, the Trump Administration has continued the Obama Administration practice of criticising the operation of the World Trade Organization's (WTO) Dispute Settlement Understanding and vetoing the appointment of new members of the Appellate Body.<sup>5</sup> Again, like the Obama Administration, current US officials have raised concerns at the WTO about the extent and manner of Chinese state intervention.

Clear differences with its predecessor can, however, be found in the Trump Administration's policy towards regional trade agreements (RTAs). In addition to ordering a review of all existing RTAs, the Trump administration sought amendments to both the US-Korea RTA and the North American Free Trade Agreement. The United States has withdrawn from one mega-regional trade agreement and ceased negotiating another. The Trump Administration has also been critical of G20 initiatives, in particular as they relate to reducing excess capacity in the steel sector.<sup>6</sup> The Trump Administration also successfully opposed to the renewal of the G20 pledge on protectionism, which was dropped from the communiqué of the G20 Leaders' Summit in December 2018.

Trump Administration officials reserve particular criticism for China. This is not the place to state and evaluate each of those criticisms, many of which were also articulated by Obama Administration officials. What matters was the change in approach, with the current US Administration prepared to invoke wide-ranging tariffs on Chinese exports unless fundamental changes in Chinese industrial and other policies are undertaken. During 2018 and again in May 2019, President Trump has threatened to put tariffs on all of China's exports to the United States, covering some half a trillion dollars of trade. However, as of July 2019, \$278 billion of American imports from China are subject to tariffs.<sup>7</sup>

The final pillar—the unilateral pillar—is frequently framed by US officials as relating to the threat posed by international trade to the national security of the United States.<sup>8</sup> The Trump Administration has to date launched four investigations under Section 232 of the Trade Expansion Act of 1962. By far the most significant in terms of potential trade affected, which at this time of writing has not yet resulted in tariffs being imposed<sup>9</sup>, relates to the apparent threat that imports of cars and car parts pose to US national security. The European Union exported, for example, €37 billion of cars and car parts to the

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<sup>4</sup> In another piece of evidence of the contemporary legacy of the trade policy of the Reagan Administration, a study by the Congressional Research Service noted that the last time a US president undertook a Section 232 investigation into the threat posed by imports was in 1986. At that time, the Commerce Department found that imports of metal cutting and metal-forming machine tools threatened to impair the national security of the United States (Fefer et al. 2018).

<sup>5</sup> See, for example, the trenchant critique on page 6 of USTR (2019a) as well as remarks on pages 25-27.

<sup>6</sup> See USTR (2019a) page 23.

<sup>7</sup> For an overview of the trade barriers imposed during the Sino-US trade war see chapter 3 of Evenett and Fritz (2019).

<sup>8</sup> Secretary Ross, in an interview on CNBC on 24 May 2018, stated "Economic security is military security. And without economic security, you cannot have military security." As reported in Financial Times (2018a).

<sup>9</sup> President Trump postponed making a decision to impose tariffs on imported cars and car parts on 17 May 2019. USTR has been given until 13 November 2019 to negotiate an arrangement for these goods with relevant trading partners, including the European Union.

United States in 2018 (Eurostat 2019). Still, the tensions inflamed by the imposition of U.S. tariffs on national security grounds on steel and aluminium imports was substantial.<sup>10</sup>

The commercial interests of the European Union are implicated in each of these four pillars. Even the Chinese pillar affects European interests as European firms have invested in both China and the United States and may be adversely affected by tariffs imposed on imports into either nation. Disruption to supply chains and to the associated corporate strategies built on them are another legitimate concern. Moreover, US actions threaten the principles and the operation of the system of world trade rules which European officials have stated repeatedly that they value. Given there is much at stake, how then have European officials traditionally reacted to high-profile acts of US trade discrimination?

### 3. Reprising the “playbook” for American protectionism

When the United States previously resorted to blatant protectionism, such as when President George W. Bush announced the imposition of higher tariffs on imported steel in the form of safeguard measures on 5 March 2002, many of America’s trading partners have followed what might be termed a playbook. Former European Commissioner for Trade, Mr. Karel De Gucht, explained the essence of this approach as follows: “You retaliate on sensitive products. The approach is always to achieve the maximum result with the minimum effort. You retaliate to hurt somebody.”<sup>11</sup>

Recognising that imposing tariffs on imports from the United States harms European buyers, the goal then is to select products for retaliation that have the greatest impact on US political decision-making at the least possible cost to European interests. With respect to the latter, this shifts the calculus in favour of retaliating on products for which ready alternatives to US suppliers exist.

With respect to the former, however, the key point is that retaliation is driven by the desire to alter the political economy of trade policymaking in the country that has undertaken protectionism, with the ultimate goal of rescinding that protectionism as soon as possible. It is for this reason that, in the context of protectionism imposed by the United States, high-profile exports from states represented by senior members of the United States Congress are frequently targeted. High-profile exports from electorally significant states may also be chosen.<sup>12</sup> This is in addition to making direct representations to the most senior members of the committees overseeing trade policy in the United States Congress.

The list of American exports targeted for retaliation by the European Commission (after US tariffs on steel and aluminium came into effect for European exporters on 1 June 2018) appear to have followed this playbook. Orange juice from Florida, a state of some electoral importance, was targeted. As was bourbon whiskey from Kentucky, which is represented in the United States Senate by the majority leader, Mr. Mitch McConnell. Cranberries and Harley-Davidson motorcycles, which are made in Wisconsin (amongst other locations), were targeted too. A congressional district in Wisconsin was represented at the time by the then-speaker of the US House of Representatives, Mr. Paul Ryan.

It is not clear that following the playbook has been successful. Press reports point to criticism from Congressional officials of Trump Administration’s trade policy<sup>13</sup>, which is a necessary condition for the playbook to work, and some contend that the July 2018 meeting between Presidents Trump and Juncker went better as a result. However, as of July 2019, US steel and aluminium tariffs were not reversed nor

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<sup>10</sup> In a speech at Georgetown University in Washington, D.C. on 7 March 2019 Commissioner Malmström made clear: “Europe was seriously offended by the imposition of steel and aluminium tariffs last summer under section 232. We do not consider that our exports are a security threat to the United States. We are friends and allies, not a threat. And now we are carefully watching the president’s decision on car and car parts” (Malmström 2019).

<sup>11</sup> As quoted in Financial Times (2018b).

<sup>12</sup> Bear in mind the vagaries of the US Electoral College and the tendency of some states to be “swing” states.

<sup>13</sup> See Financial Times (2018c) and Wall Street Journal (2018).

was the European Union permanently exempted from them. Consequently, it makes sense to revisit the logic underlying the playbook.

Recall the goal of surgical retaliation is to alter the "political economy" of trade policy decision-making in the United States. For the playbook to be successful, enough affected US exporters have to persuade US policymakers to remove the offending protectionism so that their access to the EU market is restored. Several things can go wrong here—as the saying goes there is many a slip between cup and lip.

First, US protectionism may be part of a larger package of policy changes that benefit the US exporters affected by EU retaliation. Recall that the US Congress passed, at the prompting of the Trump Administration, a generous package of tax cuts last year. Consequently, the US exporters that are targeted by the EU may feel that, on net, they have gained from the Trump Administration's policies. Moreover, Congressional representatives may rebuff US exporter concerns, arguing that overall they are better off with the package of policies, of which protectionism is only one part.<sup>14</sup>

Second, if the US exporter believes the European retaliation is going to last "too long" or get out of hand then, if sales to the EU market are critical, one response is to set up or expand production in the EU. While the EU may benefit from such "tariff jumping" foreign direct investment, for the playbook to work, however, the affected US exporters have to remain in the United States and fight the Trump Administration's protectionism. This is not just a theoretical conjecture. Recall that, after Harley-Davidson was targeted for retaliation by the European Commission, it announced that it would supply much more of the EU market from production facilities in Europe.

Third, a US firm exporting a product targeted by the EU for retaliation can choose how it supplies the EU market. For example, a US firm may have production facilities in the United States and in Mexico. Such a firm could switch production for the EU market from the United States to a Mexican plant so as to avoid paying the duties in the EU. Here switching production substitutes for expending political capital lobbying elected US representatives.

Fourth, the relative size of switching costs for exporters matter. If a US firm finds it more expensive to supply the EU market after retaliation then, if the cost of switching exports to a new overseas destination are low, then it may be preferable to do that than lobbying US elected representatives.

Fifth, to the extent that the playbook seeks to influence US administration decisions then it does so indirectly by influencing the views of US elected representatives. If the US president of the day feels that he or she can ignore the critical Congressmen and women and Senators, then the playbook is unlikely to work. In this regard, it is worth recalling two further structural factors: comparatively speaking the US economy is less dependent on exports than most (implying that fewer elected representatives will see defending exports as central to their constituents' well-being) and that the support or otherwise that elected representatives give a US president depends on factors other than trade policy (and those other factors may dominate in the calculus of any elected Congressman or woman or Senator.)

In sum, there are plenty of reasons why following the traditional playbook won't result in a reversal of high-profile acts of US protectionism. Simply put, the playbook is contingent on too many factors falling into place for it to be reliable. Economists have traditionally been nervous about supporting retaliatory measures on welfare grounds and the concerns raised above ought to add to that disquiet. The uncertain gains from following the playbook have to be weighed up against the certain losses to European buyer welfare from raising tariffs on US exports.

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<sup>14</sup> This point, among others, was made in 26 May edition of *The Economist*, whose cover was devoted to relations between President Trump and the US business community (*Economist* 2018).

Having written this, one should acknowledge that EU retaliation against American protectionism may also serve a domestic political purpose, that is, of not being seen to be pushed around by a foreign power. The merits of such virtue signalling can be questioned, not least because alternatives to retaliation do not appear to be given much consideration during policy deliberation. Indeed, as will become clear, a major trading partner of the United States did turn its cheek when hit by U.S. tariffs on imported steel and aluminium in 2018 suggesting that this political “logic” of retaliation is far from apparent to everyone.

#### 4. The European Commission’s reaction to *America First* protectionism

In characterising the European Commission’s approach to Trump Administration trade policy, it may be tempting to discuss its reaction to actions taken under each of the four pillars of the *America First* policy. Ultimately that is the approach taken here, however it is important to acknowledge the potential linkages across the pillars. For example, the European Commission joining forces with the United States (and Japan) to advance the level playing field agenda (which ostensibly has Chinese policies in its sights) may be difficult to sustain support for if the United States is concurrently imposing tariffs on EU exports.

Moreover, trying to find common ground with the United States on improvements to the WTO’s Dispute Settlement Understanding cannot be made easier if both parties are bringing cases against each other to Geneva and alleging rule violations by the other. Lastly, negotiating away trade barriers with the Trump Administration, perhaps as part of a broader package to normalise trade relations, may seem counterintuitive given it was the same US administration that walked away from the Transatlantic Trade and Investment Partnership negotiations. Such complications will be difficult to ignore, will undoubtedly be raised by some in intra-EU deliberations, and ought to influence how the EU approach to handling transatlantic trade tensions is evaluated in the round.

In describing the EU approach, it helps to have the key decisions taken in Beijing, Brussels, and Washington, DC in mind.<sup>15</sup> It is now apparent that 2017 was the quiet before the storm. Inevitably, it takes time for senior US officials to be vetted, nominated, and confirmed by the US Senate. Moreover, the Trump Administration pursued non-trade policy priorities in 2017, such as the unsuccessful repeal of President Obama’s health care legislation and the successful enactment of a large tax reform bill in December 2017.

Still, the groundwork for the tariffs imposed in 2018 and 2019 was laid in 2017, with investigations launched in April and August 2017.<sup>16</sup> Since no high-profile trade barriers were erected by the US in 2017, it was possible for some to claim then that President Trump had pulled his (trade-related) punches. A more plausible explanation is that investigations take time and that for the Trump Administration in 2017 obtaining a landmark legislative achievement was a bigger priority.

During the first year of the Trump Administration its officials took the opportunity to articulate a number of themes that were to recur, namely, the perceived link between economic prosperity and national security; the alleged link between foreign trade distortions and associated US bilateral trade deficits; the deficiencies of the World Trade Organization’s agreements and procedures and their adverse impact on the interests and legitimate objectives of the United States; and the apparent incompatibility between the Chinese economic development model and extant multilateral trade rules. However lacking in merit these claims and linkages are, no one can plausibly claim surprise in hearing them for the first time in 2018. In sum, arguments were articulated and means established (investigations) in 2017, laying the groundwork for the trade tensions that were to come to pass in 2018.

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<sup>15</sup> In this regard the timeline presented (and frequently updated) in Bown and Kolb (2019) is valuable.

<sup>16</sup> Other investigations were launched in May 2018 (into whether cars and car parts imports represented a threat to the national security of the United States) and in July 2018 (into whether uranium imports represented a threat to national security as well.)

Trade relations between the European Union and the United States entered a new, more adversarial phase following the imposition of tariffs by the Trump Administration from 2018. Across-the-board safeguard duties were imposed on imported solar panels and washing machines on 22 January 2018. More importantly, on 1 March 2018 the United States announced that additional tariff of 25% on all imported steel would be imposed along with a 10% tariff on imported aluminium, although on 22 March 2018 imports from the European Union were temporarily exempted. That temporary exemption was further extended on 30 April 2018 but ended on 1 June 2018. On 22 June 2018 the European Union retaliated by imposing tariffs on \$3.2 billion of American exports.

Looking across the four pillars, differences in the degree to which the European Commission's reaction has evolved can be discerned. The *de facto* abandonment of the Transatlantic Trade and Investment Partnership negotiations by the Trump Administration did not require much of a reaction from the European Commission, except expressions of disappointment.

### ***The level playing field agenda***

With respect to the pillars relating to China and to multilateral fora, the European Commission has sought to engage with the United States, engaging in dialogue and developing proposals. In the case of China, this engagement also included Japan and led to the elaboration of a series of scoping papers published in May 2018. A statement released by the three parties on 23 May 2019, following a meeting in Paris, referred to "progress made in discussions on text-based work on increasing transparency, identifying harmful subsidies that merit stricter treatment and ensuring that appropriate benchmarks can be used" and included an instruction to officials to finalise such text (EC 2019a). As yet, it is not known if any trilateral proposals have been put to the Chinese government<sup>17</sup> or what the process is for taking these proposals forward.

### ***WTO reform***

With respect to the WTO, the European Commission developed a range of proposals that were leaked in July 2018 (EC 2018b).<sup>18</sup> These proposals were organised around three themes: new and upgraded rules especially as they relate to subsidies, state-linked firms, and services as well modalities for negotiations; notification and monitoring obligations; and WTO dispute settlement. The European Commission tabled proposals to modernise the WTO in September 2018 (EC 2018c) and to reform the Appellate Body in November 2018 (WTO 2018). In this regard it is worth noting that on more than one occasion President Trump has stated that he might withdraw the United States from the WTO unless it is reformed.<sup>19</sup>

### ***Reaction to unilateral US acts***

The unilateral pillar, especially as it relates to the national security-related investigations undertaken by the United States, is the area where the European Commission's position has evolved the most over time. Initially, the Trump Administration temporarily exempted EU steel and aluminium exports from duties, which the European Commission sought to make permanent. Failing that, from March 2018, the

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<sup>17</sup> The EU does conduct a High-level Economic and Trade Dialogue with China. According to the European Commission, the seventh meeting of that Dialogue, which took place on 25 June 2018, involved an agreement "to set up a working group to concretely co-operate on reform to help the WTO meet new challenges and to further develop rules in key areas relevant for the global level playing field, such as industrial subsidies" (EC 2018a). Chinese reports of this meeting make no mention of the global level playing field or subsidies.

<sup>18</sup> For an evaluation of these proposals see Evenett (2018).

<sup>19</sup> On the matter of WTO reform it should also be noted that the European Union is a member of the Ottawa Group, led by Canada, that is seeking to identify proposals that a broad base of governments can support.

Commission made it clear it would bring a WTO case against the United States, impose retaliatory duties on US imports in line with the Commission's reading of WTO rules, and initiate a safeguard action on steel imports to ensure that shipments no longer sold in US markets were not redirected towards Europe.

Coupled with this three-prong strategy was the insistence, initially at least, that the EU would not negotiate with the United States on this matter until the threat of tariffs were withdrawn. In a number of press reports it has been suggested that US Administration officials saw the threat of tariffs as a means of gaining negotiating leverage and that trading partners were expected to offer or to accept curbs on steel and aluminium exports to the US, or otherwise lift trade barriers facing US exports. If this account of the US approach is correct, then the preconditions were in place for a dialogue of the deaf across the Atlantic.

Once the expectation arose that the EU exemption from steel and aluminium tariffs would not be extended beyond 1 June 2018, conflicting signals were sent by the governments of France and Germany to the United States in late April and early May 2018. While EU leaders were able to agree at a meeting in Sofia that discussions (rather than negotiations) with the United States on the bilateral economic relationship could begin only after the threat of US tariffs was dropped, the appearance of divisions among the member states, while hardly a new phenomenon, could not have enhanced the position of the European Commission in its discussions with American counterparts.

The announcement towards the end of May 2018 that the United States would investigate whether cars and car parts threaten to impair its national security received did not go unnoticed, in particular in Germany which is a major exporter of these products. The willingness of officials in Berlin to countenance a deal with the United States apparently without the withdrawal of the threat of steel- and aluminium-related tariffs likely influenced the events that followed.

The ultimate imposition on 1 June 2018 of tariffs on EU steel and aluminium exports to the US served as a reminder that the threats to EU commercial interests were no longer hypothetical. Soon after the EU imposed tariffs on an amount of US exports equivalent to 44% of the value of EU exports harmed by the new US tariffs on steel and aluminium.<sup>20</sup> Moreover, it was reported that, in a submission to the US Department of Commerce, the European Commission warned that global retaliation to any US tariffs on cars and car parts could affect up to \$294 billion of US exports (Financial Times 2018d). The intended audience for this submission may have included other affected US trading partners and not only decision-makers in Washington, DC.

### ***The Juncker-Trump meeting in July 2018 and reaction***

A shift in the EU's approach to handling trade tensions with the United States became apparent after Presidents Juncker and Trump met in Washington, DC on 25 July 2018. Before the meeting it was reported that, consistent with its view that any deals must benefit all participants, the EU would offer to negotiate a plurilateral deal to lower trade barriers by the world's major car exporters. In addition, a review of EU barriers to US exports was to be offered as well as joint approaches to Chinese trade practices (New York Times 2018).

It appears the meeting of 25 July 2018 did not go according to plan. Suggestions to negotiate a plurilateral deal among car exporters were not embraced, presumably by the American side. Instead, according to a joint statement issued after the meeting<sup>21</sup>, four steps were agreed. First, it was agreed "to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods. We will also work to reduce barriers and increase trade in services, chemicals, pharmaceuticals,

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<sup>20</sup> The balance, 56%, would be hit by EU tariffs should the Commission's WTO case against the United States prevail or after three years, whichever comes sooner.

<sup>21</sup> The text of this Joint Statement can be accessed at [https://eeas.europa.eu/delegations/united-states-america/48861/joint-us-eu-statement-following-president-junckers-visit-white-house\\_en](https://eeas.europa.eu/delegations/united-states-america/48861/joint-us-eu-statement-following-president-junckers-visit-white-house_en).



medical products, as well as soybeans." Notice the phrase "work together" can have a different meaning than "negotiate." Perhaps the more important point is that the scope of this barrier-reduction exercise goes beyond (and seems to exclude) cars and inevitably invited comparisons to the lapsed Transatlantic Trade and Investment Partnership negotiations.

Second, greater cooperation on energy policy was envisaged with specific reference made to EU interest in importing more liquid natural gas from the United States. Third, a dialogue on regulatory standards and their effects on trade would be launched. Fourth, the EU and the US agreed to work with like-minded trading partners to reform the WTO and to address third party trade distortions (more code for Chinese trading practices.)

Lastly, the following cryptic phrase was included in the statement "While we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiations." This has been interpreted principally by European observers<sup>22</sup> to mean that the US will not impose new tariffs on EU exports while discussions are ongoing.

Subsequently, this meeting was seen as declaring a truce in transatlantic trade tensions. An Executive Working Group, jointly chaired by the European Commissioner for Trade and the USTR, was established to take this initiative forward. Reaction within the EU to this deal was, however, mixed. German and Dutch government representatives welcomed the deal. Meanwhile, the French government sought clarifications about its contents, especially as it relates to sensitive agricultural trade policies and environmental and health standards. The criticism was made both in Paris and by a leading member of the European Parliament that the European Commission was unable to secure the elimination of the US tariffs on steel and aluminium first (Financial Times 2018e).

Others pointed out that full-fledged trade negotiations would require a separate mandate from the EU member states and that the EU was not going to engage in managed trade of soybeans and liquid natural gas. Yet it transpires that the European Union has imported much more soybeans from the United States since the 25 July 2018 meeting. In a memorandum to EU Member States representatives on 30 January 2019, European Commission officials noted

"There has been a significant increase in US exports since the start of the 2018/19 marketing year on 1 July 2018. Over the first 31 weeks of the marketing year, up to 27 January 2019, the EU imported 6.1 million tonnes of soybeans from the US, representing an increase of 114% compared to the same period in 2017-18. Given this strong trade performance, the US presently has a 77% share of all EU imports of soybeans (compared to 39% in the same period in 2017-8)" (EC 2019b).

How this feat was pulled off and which trading partners lost market share was not reported. Furthermore, the European Commission initiated a process by which the use of U.S. soybeans to produce biofuels in the European Union will be permitted.

After the initial reaction to the meeting of the two Presidents, attention switched to which items would be included in the subsequent negotiating agenda. Representatives of both parties diverged from the Presidents' joint statement in important respects. Commissioner Malmström suggested including cars in the negotiations to eliminate tariffs on industrial goods. American public officials suggested including agricultural trade reform in the talks.

### ***Negotiating mandates***

The United States has made clear its objectives for the subsequent talks with the European Union. In its annual strategy statement of 2019, USTR states "Despite this significant trade volume, U.S. exporters in key sectors have been challenged by multiple tariff and non-tariff barriers for decades, leading to

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<sup>22</sup> See, for example, <https://www.politico.eu/article/donald-trump-jean-claude-junker-announces-trade-negotiations-with-eu/>.

chronic U.S. trade imbalances with the EU” (USTR 2019a, page 29). USTR published detailed objectives for the negotiation of a trade agreement with the European Union on 11 January 2019. These objectives are far-reaching covering 24 areas of public policy and give little sense of prioritisation (USTR 2019b).

On agricultural trade reform, the United States is seeking “comprehensive market access for U.S. agricultural goods in the EU by reducing or eliminating tariffs” as well as reforms to European sanitary and phytosanitary rules. The United States is also seeking access to EU government procurement markets while seeking to exclude from the negotiations its own Buy America policies. Another U.S. negotiating objective is to preserve exceptions on national security grounds (USTR 2019b).

It was only until 9 April 2019 that the European Council gave the European Commission a mandate to negotiate with the United States on the elimination of tariffs on industrial goods. Negotiations on agricultural products were specifically excluded by the Council. Moreover, the Council made specific reference to “sensitivities” that it felt should be taken into account during negotiations (EC 2019c). Another decision by the European Council allowed for negotiations over conformity assessment.

In contrast to the U.S. document on negotiating objectives, the corresponding EU documents are sparse, to say the least. The impression that both parties to this negotiation are not aligned on its agenda is hard to dispel. That impression is reinforced by statements in the report to EU member state representatives mentioned earlier (that was finalised after the U.S. negotiating objectives were published but before the European Council approved the Commission’s negotiating mandate.) The European Commission’s report argued:

“It should be kept in mind that the two Presidents agreed in this joint agenda to focus on a limited range of areas where results could be realistically achieved quickly and without entering areas of significant sensitivity for either side. This is why for example the joint agenda does not include agriculture—which is a sensitivity for the EU side—or public procurement—which is a sensitivity for the US. In this sense, cooperation under the joint agenda should not be compared with the wide-ranging and comprehensive scope of a typical modern EU trade agreement...” (EC 2019b).

This statement begs the question as to what the specifically the joint agenda is?<sup>23</sup> One way to reconcile this statement from the European Commission with the published negotiating objectives of the United States is that the latter document is for domestic consumption and that there is an understanding that the agenda is narrower and arguably less ambitious. Such a reconciliation beggars belief.

European Commission officials have also made clear that the “removal of restrictions on exports of steel and aluminium is a precondition for the conclusion of negotiations” (EC 2019b) and that they would refuse to negotiate further with the United States should it impose tariffs on imported cars and car parts on national security grounds.<sup>24</sup> When asked to give an assessment of the status of EU-U.S. talks in June 2019, Commissioner Malmström made specific reference to progress on trade in soybeans and liquefied natural gas. She conceded that officials were still at the exploration stage on conformity assessment and that negotiations on an agreement to free up trade in industrial goods had not started yet. Tellingly she observed “And here there is a discrepancy on mandates” especially as it relates to

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<sup>23</sup> As a result of a legal requirement in the United States relating to securing Trade Promotion Authority for an upcoming trade negotiation, the United States and the European Commission did not engage in a “scoping exercise” before publication of the United States’ negotiating objectives.

<sup>24</sup> Austrian Economy Minister Margarete Schramböck was reported in November 2018 saying “Agricultural products are not part of that mandate so they are not the object of the negotiation. We expect the Americans to move because the Europeans have already moved. We have shown that the quota for non-hormone treated beef and veal—there’s been a lot of movement on that.” The implication is that a country-specific import quota had been established for the United States, or was planned. Whether the United States is prepared to forgo all of its negotiating objectives on agriculture for this quota remains to be seen. At the time this statement was made Austria held the presidency of the European Union. See Inside U.S. Trade (2018b).

agricultural trade and government procurement. She noted "there is no way EU member states will engage on agriculture" (Inside U.S. Trade 2019a).

Pressure for the inclusion of agricultural trade matters in the negotiation has come from influential members of Congress. Senator Grassley, chairman of the Senate Finance Committee which oversees trade matters, has consistently argued for the inclusion of agriculture in the negotiating agenda. He has argued that doing so creates more room for beneficial trade-offs. He has also put the matter more negatively and is reported as stating in April 2019 "I don't think you can go ahead unless there's an agreement on what you're going to debate. So, the talks won't proceed" (Inside U.S. Trade 2019b).<sup>25</sup> Senator Grassley was also opposed to the suggestion, made by the United States Trade Representative, that the negotiation proceed in stages.

### ***Greater impetus to the negotiation of selected regional trade agreements (RTAs)***

In addition to taking the steps above the European Commission has placed greater emphasis on completing and starting new RTA negotiations with trading partners other than the United States. The logic appears to be to demonstrate that, while others may turn inward, the European Union wants to open up further, at least on a reciprocal basis. On 22 May 2018 the European Council agreed to start separate RTA negotiations with Australia and New Zealand. On 17 July 2018 the European Union and Japan signed a strategic partnership agreement, which came into force on 1 February 2019. A "political agreement" with the four members of the MERCOSUR group was reached on 28 June 2019, in the margins of the G20 Leaders' Summit in Osaka, Japan.<sup>26</sup> The EU signed a free trade agreement and an investment protection agreement with Vietnam on 30 June 2019. Existing RTAs with Chile and Mexico are being "modernised."

### ***Other developments in 2019***

Two other developments have further complicated EU trade relations with the United States during 2019. The first is the long-standing sore that relates to subsidies to wide-bodied aircraft producers, Boeing and Airbus. Following a WTO ruling in its favour, USTR proposed on 12 April 2019 that additional import tariffs up to 100% would be imposed on imports from the EU worth \$21 billion (USTR 2019c). Moreover, on 1 July 2019 USTR proposed adding 89 more products to this retaliatory list, bringing the total value of EU exports at risk up to \$25 billion. Imposition of additional tariffs on this scale will not go unnoticed by European Union member states.<sup>27</sup>

The second development was the decision by the USTR, upon the direction of President Trump, to start an investigation under Section 301 of the Trade Act of 1974 of the newly-enacted French Digital Services Tax. This announcement was made on 10 July 2019. The associated Federal Register notice notes "The tax applies only to companies with annual revenues from the covered services of at least €750 million globally and €25 million in France" and that "Available evidence, including statements by French officials, suggest that France expects the tax to target certain large, U.S.-based tech giants" (USTR 2019d). This particular investigation would determine whether the French measure constitutes *de facto* discrimination against American companies, whether the retroactive application of the tax was

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<sup>25</sup> Senator Grassley also observed "As long as Lighthizer has put out a statement and a basis for negotiation that disagrees with Europe because it [has] agriculture in it, then I think it's a moot question until Europe comes around" (Inside US Trade 2019b).

<sup>26</sup> In a statement Commissioner Malmström put the RTA with MERCOSUR in the following context: "*Over the past few years the EU has consolidated its position as the global leader in open and sustainable trade. Agreements with 15 countries have entered into force since 2014, notably with Canada and Japan. This agreement adds four more countries to our impressive roster of trade allies*" (EC 2019d).

<sup>27</sup> In a revealing remark on 9 June 2019 Commissioner Malmström said that "we haven't really started those talks" (about a possible resolution to threat of U.S. tariffs on cars and car parts) (Inside U.S. Trade 2019a).

fair, and whether the new French tax diverged “from norms reflected in the U.S. tax system and the international tax system in several respects.” The investigation may take up to a year, opening in 2020 another possible front in transatlantic trade tensions.

## 5. Assessing the EU’s approach to managing trade tensions with the United States

The following questions can be used to evaluate the European Commission’s approach:

1. Did the approach result in the removal of *America First*-related US tariffs or the removal of the threat of the imposition of such tariffs?
2. Has the approach resulted in other outcomes (such as reforms to the WTO or changes in government policy) that are likely to reduce trade tensions globally?
3. Was the approach consistent over time?
4. Was the approach coherent or well founded in logic or evidence?
5. Was the approach consistent with the multilateral trade principles the EU seeks to uphold?
6. Was the approach optimal? Were there no preferable alternatives?

The first two questions relate to outcomes. The third through fifth questions relate to the choice of means rather than results. The sixth question relates to alternative means. Each is evaluated in turn.

### *Removal of tariffs and the threat of new tariffs*

As of this writing, the European Commission’s approach has not resulted in the removal of the tariffs imposed by the US on imported steel and aluminium on national security grounds. Moreover, until the United States confirms to the contrary, the threat of tariffs on imported cars remains, notwithstanding the talks initiated following the meeting of Presidents Juncker and Trump in July 2018. While this points to a rather negative evaluation of the European Commission’s approach, it should be noted that it may be too soon to tell. After all, when President Bush imposed tariffs on imported steel in March 2002, these were followed by threats of retaliation by the European Union. When the United States lost the associated WTO dispute, the EU threatened retaliation again and the Bush Administration withdrew the tariffs soon after in December 2003. Those steel tariffs which were supposed to last for three years ended up being removed after only 20 months.<sup>28</sup>

Even if one is prepared to grant the point that it is too soon to come to a judgement, the disagreements between Brussels and Washington, DC over the scope of the negotiating mandate for liberalising industrial goods trade casts doubt on developing a path that results eventually in the steel and aluminium tariffs being removed. Of course, one could try to argue that in the absence of the European Commission’s approach then matters would have been worse, but what evidence is there to support that conjecture? By setting up a bilateral negotiating initiative with counterparts in the Trump Administration, perhaps one could credit the European Commission for stalling higher U.S. tariffs on imported cars and any retaliation that would bring forth from the EU. Maybe the best that can be said for the European Commission’s approach is that it is a holding operation.

### *Systemic payoff*

With respect to any systemic payoff in terms of lower trade tensions, it is hard to point to any benefits that have followed from the European Commission’s approach. As of this writing, there are no reforms to WTO rules or procedures to credit to the European Commission. Nor is it evident that the European

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<sup>28</sup> There again, given the Appellate Body deadlock, resolution of the US section 232 measures through the WTO within 20 months appears unlikely, if not impossible. I thank Edwin Vermulst for making this point to me.

Commission joining forces with Japan and the United States has resulted in first-order changes in Chinese government behaviour. Moreover, it is not apparent that the United States has moderated its criticisms of China as a result of either cooperating with the EU and Japan. Likewise, any moderation of US criticism of the WTO's dispute settlement procedures on account of adoption of the EU's WTO reform proposals. In sum, the best one can say about the European Commission's approach here is that the steps it took in 2018 to reduce systemic trade tensions have laid the foundation for future improvements.<sup>29</sup>

### ***Consistency over time***

With respect to consistency over time, the European Commission's approach fails this standard. The initial EU approach sought to deny the United States negotiating leverage by arguing that Brussels would not negotiate under the threat of tariff increases. Since the perceived American leverage depended on their tariff increase, demanding that the United States abandon the latter before talks began was not going to succeed. Plus, as Secretary Ross pointed out, if China could negotiate under the shadow of threatened tariff increases then why can't the European Union? Worse, as the likelihood that steel and aluminium tariffs would be imposed on EU exports grew, combined with the additional threat of tariffs on car and car part exports, it is not surprising that some Member States felt that there was enough at stake to merit a different approach and made direct overtures to Washington, DC. That the European Union has not presented a united front is hardly lost on decision-makers in the US capital and may well encourage the latter to hold out even longer for concessions from the European Union in return for abandoning any tariffs on cars and car parts. Given their extensive experience, perhaps American policymakers have a playbook for dealing with the European Union on trade policy matters?

### ***Coherence***

With respect to logical coherence and compelling supporting evidence, concerns have already been raised earlier in this paper about the effectiveness of imposing retaliatory tariffs as a way to induce the Trump Administration to reverse the imposition of tariffs on imported steel and aluminium. Reinforcing the doubts about the effectiveness of the standard EU playbook is the limited scale of the US exports subject immediately to EU retaliatory tariffs. If the playbook was followed with conviction then, unless there is a lack of suitable targets (which itself would be revealing), WTO rules notwithstanding, surely as many US exports should be hit as soon as possible?<sup>30</sup> This is not an argument for mass retaliation. Rather it is to question the value of token retaliation and to encourage reflection on what factors are holding back the scale of EU retaliation.<sup>31</sup>

### ***Adherence to multilateral trade principles***

With respect to adherence to multilateral trade principles, the justification for the European Commission's retaliation against the US imposition of tariffs on imported steel and aluminium was that the latter act constituted *de facto* a safeguard action. This, of course, is contested by the United States, which argues that the latter act follows from an investigation of the implications for national security of

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<sup>29</sup> Again, one might fall back on the argument that it is too soon to judge the European Commission's approach. Given the likelihood that by the end of 2019 the WTO's Appellate Body will have collapsed, then this creates a deadline by which to judge the steps taken by any WTO member that is seeking to preserve the current system of dispute settlement. Time is not on the side of the "too soon to say" defence.

<sup>30</sup> Put differently, to the extent that WTO rules on immediate retaliation against safeguard measures limit the size of US exports affected, then this further weakens the effectiveness of the EU playbook. In turn this begs the question whether the EU can simultaneously support the multilateral trading system and deploy an effective playbook that induces changes in American trade policy?

<sup>31</sup> After all, some of the factors limiting EU retaliation may make a lot of sense.

the said imports. For those persuaded by this particular American argument the European Union's retaliatory tariffs violate WTO rules, leaving the EU open to the charge that it is, paradoxically, breaking its WTO obligations so as to defend the rules-based world trading system. Whatever the legal merits of the EU's case here, the optics are unfortunate and should surely have shifted the decision-making calculus further away from retaliating in the first place.

Another concern is that the European Union's increased imports of US soybeans since July 2018, the proposed new rule to allow US soybeans to be converted into biofuel in the EU, and the apparent granting of a country-specific quota for American beef, might be regarded as rewards for the United States for violating accepted multilateral trade principles. Moreover, the vast shifts in soybeans sourcing to the United States smacks of the kind of managed trade that the European Commission publicly eschews.

### *Optimality*

With respect to the optimality of the European Commission's approach, one way to test this is to ask "compared to what alternative?" Here it is worth contrasting the approach taken by the Government of Japan with that of the European Commission. On a per capita basis, both Japan and the European Union exported approximately the same amounts of steel and aluminium to the United States in 2017. Both are large exporters of cars and car parts to the United States. In short, both jurisdictions have significant stakes in terms of potential trade flows affected, after normalising for their difference in size. Both too have a stake in the successful operation of the multilateral trading system and both are on record expressing concerns about Chinese government practices and associated economic development model.

Japan's response to *America First* trade policy has four aspects to it. First, as noted earlier, Japan and the EU joined forces with the United States to develop proposals for a level commercial playing field. Second, while Japan has yet to file a WTO dispute settlement case against the United States concerning the latter's tariffs on steel and aluminium, news reports in June 2018 cite Japanese government officials stating they want to cooperate with the EU on the case it has brought against these tariffs.<sup>32</sup> Third, Japan also notified the WTO on 18 May 2018 of its right to suspend equivalent concessions in respect of exports from the United States. Crucially, however, to date Japan has not chosen to impose retaliatory tariffs on the United States. For sure, the United States has not exempted Japan from these tariffs despite lobbying by Prime Minister Abe, actions and outcomes that in many respects parallel that of the European Union. However, by not retaliating, Japan has avoided the associated welfare losses and avoided the accusation that it has broken WTO rules in order to defend them.

Fourth, Japan and the United States have initiated negotiations towards a regional trade agreement. The Trump Administration is pursuing this negotiation under its Trade Promotion Authority. Pursuant to that, negotiating objectives were published in December 2018 and confirmed the traditional U.S. practice of seeking negotiations on a wide range of matters implicating goods trade, services trade, digital trade, investment, intellectual property, and state-owned enterprises. However, the United States Trade Representatives indicated that it may pursue the negotiation with the Japan in stages rather than have a comprehensive negotiation (Congressional Research Service 2019).

Another difference in approach between Japan and the European Commission is that on 17 July 2018 the latter imposed a preliminary safeguard measure of 25% duties on imported steel justified, in part, by concerns about trade deflection. The additional 25% steel tariffs applied in the United States may make it commercially unattractive for some steel producers to sell there and those shipments may be diverted to EU markets, depressing prices there and threatening steel producers in the European Union. A careful

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<sup>32</sup> On 8 June 2018 Japan requested to join the consultations between the European Union and the United States over the former's WTO dispute settlement case concerning the steel and aluminium tariffs imposed by the Trump Administration. To date, Japan has not brought its own WTO dispute settlement case against the United States on this matter.

reading of the relevant Commission Implementing Regulation<sup>33</sup> reveals that much of the evidence mustered applies to the era before the Section 232-related tariffs were imposed by the United States in 2018. Only steel imports from members of the European Economic Area were exempted. While the harm to European steel buyers was arguably limited by the adoption of a tariff rate quota, rather than an across-the-board tariff on all affected steel imports, this action contributes to the "multilateralization" of the problem created by the original US tariff increase. Despite being a major steel producer<sup>34</sup>, to date Japan has not chosen to follow suit thus avoiding further welfare losses associated with restricting imports.

In sum, a comparison between Japan's and the European Commission's approach is instructive. Both nations failed to win exemptions from US steel and aluminium tariffs. Japan, however, has shown greater restraint in terms of erecting tariff barriers in response to *America First* protectionism, whether in direct retaliation or on account of potential trade deflection. Whether such Japanese restraint endures, especially if the United States imposes tariffs on imported cars and car parts, remains to be seen. At the moment, however, on several grounds Japan's approach has the edge over the response of the European Union.

## **6. Concluding remarks and implications for the next European Commission**

President Juncker reacted to the threat of US steel and aluminium tariffs in March 2018 by stating that "We can also do stupid." So how stupid was the European Commission's response to the flagrant US protectionism of 2018? To be sure, the years 2018 and 2019 have been an extraordinary time for senior trade policymakers. Still, outbreaks of US protectionism are not new (even if the scale of recent interventions are unusually large), the United States' political system is relatively more transparent than many other nations, and by initiating investigations in 2017 the Trump Administration gave notice that it might act aggressively in 2018.

Arguably, the European Commission's response has fallen short. Perhaps the best evidence to support this comes from the Commission itself. Specifically, there was a marked shift in approach in July 2018 when the European Commission conceded that it would negotiate with the United States under the threat of new tariffs (on car and car parts) and with steel and aluminium tariffs still in place. If the strategy of the United States government was to gain negotiating leverage by raising tariffs or threatening to do so, then it has worked in so far as discussions are envisaged concerning reducing barriers to American exports. Of course, whether those discussions amount to anything is another matter (and reasons for doubt were presented in this paper.)

The contrast between Japan's response to date to *America First* protectionism and that of the European Union is instructive. After failing to win exemptions for Japanese steel, the government in Tokyo decided against erecting trade barriers against the United States or against other steel producers. In so doing, the harm to Japanese buyers from higher trade barriers has been avoided. European importers have not been so fortunate. Indeed, there is a whiff of opportunism in the July 2018 decision by the European Commission to impose a preliminary safeguard on imported steel. Fears of trade deflection following US protectionism could become the favoured argument of European interests seeking to erect more barriers to imports. Should the United States follow through and impose 25% tariffs on all imports from China then such fears will be fanned in Europe.

This paper also examined the logic of retaliation to foreign protectionism. When the contemporary realities of US politics and the full range of options available to firms are taken into account, the logic of the traditional EU playbook for dealing with high-profile acts of US protectionism was found wanting.

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<sup>33</sup> 2018/1013.

<sup>34</sup> According to the World Steel Association, in 2017 Japanese steel plants produced 104.7 million tons of crude steel (World Steel Association 2018). The largest EU producer of steel, Germany, produced 43.4 million tons of crude steel in 2017.

It is important to remember that the purpose of retaliation is to alter the political economy of trade policy making in the nation that erected the offending trade barrier. Circumstances change and so European trade policymakers should be cautious about assuming that a playbook that may have “worked” in the past continues to do so.

Looking forward, what has the Juncker Commission bequeathed to its successor? Rather than induce a reversal of U.S. tariff increases on imported European steel and aluminium, the best that can be said for the approach taken during the Juncker Commission is that it stalled for at least one year the imposition of American tariff increases on cars and car parts. In doing so, pressures from European Union member states to retaliate further against American protectionism have been contained, at least for now.

But how long can this approach last? That trade officials in Brussels and Washington, DC are so far apart in defining the negotiating agenda for bilateral trade talks, and that so little progress has been made since Presidents Juncker and Trump met, calls into question the durability of the current approach of the European Commission. Getting a bilateral negotiation up and running may have been an effective short-run *tactic* to stall pressures for further protectionism on both sides of the Atlantic, but to date little in terms of *strategy* to reverse American tariff increases or, more generally, to alter American trade policy can be divined from the approach of the Juncker Commission.

When developments in 2019 are taken into account, further doubts about the length of time that the European Commission can hold the line arise. The determination of the Trump Administration to impose duties up to 100% on \$25 billion of EU exports on account of the Airbus-Boeing dispute will raise hackles among affected European interests and among the EU member states. Moreover, USTR’s investigation into the new French digital services tax sets up a potential clash for 2020. Plus the U.S. presidential election cycle which will soon begin in earnest is not known for its enlightening effect on American trade policymaking.

The potential upside of the nascent US-EU negotiation on industrial goods and the other elements of the work programme following the Juncker-Trump meeting of July 2018 are unlikely to be enough to contain the trade tensions raised by these developments, let alone any decision by the Trump Administration to impose tariffs on cars and car parts. Consequently, the new European Commission should expect to find itself revising its approach to *America First* trade policy—the fragile construct arranged by the Juncker Commission is likely to buckle under pressure.

That revision should give serious consideration to which objectives can be realistically accomplished by the European Commission given the political dynamics on both sides of the Atlantic. Evidently, the standard “playbook” won’t do. But the deeper question is whether, even with its heft, the European Union can induce first-order changes in the trade policy of the United States? And, should the United States continue to turn inward, it does not follow that the European Union should follow, consciously or unconsciously by repeated attempts to retaliate against American trade discrimination. There will, of course, be self-serving advocates of retaliation by the European Union but those advocates should be forced to spell out the logic and evidence linking their proposed trade restrictions to more enlightened trade policy in the United States.

But that is not all. There is still the risk that the United States will impose high tariffs on all imports from China. Should that come to pass, then fears that some of the half a trillion dollars of affected Chinese exports will be deflected into EU markets will be articulated. Were that to provide certain European interests with a pretext for widespread application of safeguards on European imports, then transatlantic trade tensions morph into a far more serious conflict between the European Union and many of its trading partners. Alas, there is scope for European Union trade policy to become a lot more stupid.



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**Table 1: The four pillars of *America First* trade policy and the European Union’s principal response**

Pillar	Multilateral	Regional trade agreements	Bilateral/China	Unilateral/“National security”
Matters of interest to the United States or relevant fora	WTO reform, in particular of the Dispute Settlement Understanding	Withdrawal from Trans-Pacific Partnership; the Trans-Atlantic Trade and Investment Partnership negotiations put on ice.	Section 301 investigation of Chinese policies towards intellectual property and related matters	Section 232 investigation of steel and aluminium imports
	G20 Global Forum on Steel Excess Capacity	Renegotiation of the North American Free Trade Agreement		Section 232 investigation of automobiles and automotive parts
	G20 trade work programme, including protectionist pledge (up for renewal in December 2018)	Renegotiation of the US-Korea Free Trade Agreement		Section 232 investigation of uranium imports
Principal European Union response	Propose reforms to the WTO specifically: <ul style="list-style-type: none"> <li>• New rules on subsidies and state-related businesses.</li> <li>• Strengthened notification and monitoring provisions.</li> <li>• Two-step process to reform the WTO dispute settlement understanding.</li> </ul>		Develop a trilateral approach with Japan and the United States that involves information exchange about third parties’ policies and development of new multilateral trade rules to level the commercial playing field.	<ul style="list-style-type: none"> <li>• With respect to steel and aluminium tariffs, having failed to obtain an exemption, a WTO case was brought, safeguard duties placed to limit trade deflection, and phased-in retaliatory tariffs adopted.</li> <li>• A joint US-EU initiative launched on 25 July 2018 with, among others, the goal of removing trade barriers on industrial goods other than cars. As part of this accord neither side is supposed to levy new tariffs on the other, with possible implications for the ongoing Section 232 investigation into car imports.</li> <li>• Public threats of retaliatory tariffs on 18-20 billion euros of US exports to the EU if the US imports tariffs on EU cars.</li> </ul>

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